

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Adelphia Cable Communications)	CSR 6386-E
)	
Petition for Determination of Effective)	
Competition in Fort Bragg City, Twentynine Palms)	
City and Yucca Valley Town, CA)	
)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: March 1, 2007

Released: March 2, 2007

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Adelphia Cable Communications, on behalf of its affiliates (“Adelphia”),¹ has filed a petition with the Commission pursuant to Sections 76.7, 76.905(b)(2) and 76.907 for a determination that its cable systems serving three Southern California franchise areas (the “Franchise Areas”)² are subject to effective competition pursuant to Section 623(a)(1) of the Communications Act of 1934, as amended, (“Communications Act”), and are therefore exempt from rate regulation.³ No oppositions to the petition were filed. We grant the petition finding that Adelphia is subject to effective competition in the Franchise Areas.

¹ Comcast Corporation and Time Warner recently acquired the assets of Adelphia Communications Corporation. *In the Matter of Applications for Consent to the Assignment and/or Transfer of Control of Licenses: Adelphia Communications Corporation (and subsidiaries, debtors-in-possession), Assignors to Time Warner Cable Inc. (subsidiaries), Assignees; Adelphia Communications Corporation (and subsidiaries, debtors-in-possession), Assignors and Transferors to Comcast Corporation (subsidiaries), Assignees and Transferrees; Comcast Corporation, Transferor, to Time Warner, Inc.; Transferree; Time Warner, Inc., Transferor, to Comcast Corporation, Transferree*, 21 FCC Rcd 8203 (2006). As part of that proceeding, the parties requested that the Commission’s grant of its consent to the transactions include and accommodate, as appropriate, applications that will have been filed by such licensees relating to such cable systems that are pending at the time of the consummation of the transactions. In this matter, we also will take that to include pending petitions for effective competition. Therefore, the action we take in this proceeding will transfer to the successor-in-interest, either Comcast or Time Warner, as it relates to these Franchise Areas.

² Adelphia Petition at 1 (requesting that the Commission find effective competition in Fort Bragg (CA0216), Twentynine Palms (CA0083), and Yucca Valley (CA0117)).

³ 47 U.S.C. § 543(a).

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,⁴ as that term is defined by Section 623(1) of the Communications Act of 1934, as amended, and Section 76.905 of the Commission's rules.⁵ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.⁶

II. DISCUSSION

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if its franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors ("MVPD"), each of which offer comparable programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds fifteen percent of the households in the franchise area.⁷ Turning to the first prong of this test, we find that the DBS service of DIRECTV, Inc. ("DIRECTV") and DISH Network ("DISH") is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in the franchise area are made reasonably aware that the service is available.⁸ The two DBS providers' subscriber growth reached approximately 26.1 million as of June 2005, comprising approximately 27.7 percent of all MVPD subscribers nationwide; DIRECTV has become the second largest, and DISH the third largest, MVPD provider.⁹ In view of this DBS growth data, and the data discussed below showing that more than 15 percent of the households in each of the Franchise Areas are DBS subscribers, we conclude that the population of the Franchise Areas at issue here may be deemed reasonably aware of the availability of DBS service for purposes of the first prong of the competing provider test. With respect to the issue of program comparability, we find that the programming of the DBS providers satisfies the Commission's program comparability criterion because the DBS providers offer substantially more than 12 channels of video programming, including more than one non-broadcast channel.¹⁰ We find further that Adelphia has demonstrated that the Franchise Areas are served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the Franchise Areas. Therefore, the first prong of the competing provider test is satisfied.

4. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceeds 15 percent of the households in a franchise area. Adelphia's assertion that it is the largest MVPD provider in the Franchise Areas was not disputed.¹¹ In order to determine the number of households served by the DBS providers, Adelphia purchased a Media Business Corp. Enhanced Satellite Tracking Report that identified the number of subscribers attributable to

⁴ 47 C.F.R. § 76.906.

⁵ See 47 U.S.C. § 543(1) and 47 C.F.R. § 76.905.

⁶ See 47 C.F.R. §§ 76.906 & 907.

⁷ 47 U.S.C. § 543(1)(1)(B); see also 47 C.F.R. § 76.905(b)(2).

⁸ See *MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

⁹ *Twelfth Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, FCC 06-11 at ¶¶ 6, 13, 72-73 (rel. March 3, 2006).

¹⁰ See 47 C.F.R. § 76.905(g).

¹¹ Adelphia Petition at 5 and Exhibit 4.

the DBS subscribers within the Franchise Areas on a five-digit zip code basis.¹² Based upon the aggregate DBS subscriber penetration levels, calculated using the 2000 Census household data, we find that Adelphia has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest, is 21.16 percent in Fort Bragg, 22.77 percent in Twentynine Palms, and 30.09 percent in Yucca Valley.¹³ Therefore, the second prong of the competing provider test is satisfied. Based on the foregoing, we conclude that Adelphia has submitted sufficient evidence demonstrating that its cable systems serving the Franchise Areas are subject to competing provider effective competition.

III. ORDERING CLAUSES

5. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition in Fort Bragg City, Twentynine Palms City and Yucca Valley Town, California filed by Adelphia Cable Communications **IS GRANTED**.

6. **IT IS FURTHER ORDERED** that the certifications to regulate basic service rates granted to any of the local franchising authorities overseeing Adelphia Communications in the affected Franchise Areas **ARE REVOKED**.

7. This action is taken pursuant to delegated authority under Section 0.283 of the Commission's rules.¹⁴

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Deputy Chief, Policy Division
Media Bureau

¹² *Id.* at 5-6 and Exhibit 4.

¹³ *See* Attachment A.

¹⁴ 47 C.F.R. § 0.283.

ATTACHMENT A**File No. CSR 6386-E****FRANCHISE AREAS SERVED BY
Adelphia Cable Communications on behalf of its Affiliates****Competing Provider Test**

Franchise Area	2000 Census Household	DBS Subs Allocated	CPR: DBS Penetration Rate
Fort Bragg, CA	2,840	601	21.16%
Twentynine Palms, CA	5,653	1,287	22.77%
Yucca Valley, CA	6,949	2,091	30.09%